

Hon. _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,
STATE OF WASHINGTON,
PUYALLUP TRIBE OF INDIANS; and
MUCKLESHOOT INDIAN TRIBE,

Plaintiffs,

v.

AOL EXPRESS, INC., ARKEMA INC.,
EDWARD and MOLLY BARRY, BUFFELEN
WOODWORKING CO., CHS INC., CHARLES P.
and PATRICIA CURRAN, DUNLAP TOWING
COMPANY, ESTATE OF NORMAN NORDLUND,
ESTATE OF LESLIE P. SUSSMAN, F.O.F., INC.,
HYLEBOS BOAT HAVEN, HYLEBOS MARINA
INC., JUDY JOHNSON, JONES CHEMICALS,
INC., JOSEPH SIMON & SONS/RAIL &
LOCOMOTIVE EQUIPMENT CO.,
LOUISIANA-PACIFIC CORPORATION, PHYLLIS
NORDLUND, NORDLUND BOAT COMPANY,
INC., NORDLUND PROPERTIES, INC., NOVEON

Civil No.

COMPLAINT

1 KALAMA CHEMICAL, INC., DON and ALBA)
2 OLINE, RONALD OLINE, DONALD S. and)
3 BARBARA L. OLSON, KAY E. OLSON, OLSON &)
4 CURRAN BARNACLE STOPPING SALT WATER)
5 FREE VERTICAL DRY DOCK CO. dba OLE &)
6 CHARLIE'S MARINAS, PORTAC, INC.,)
7 RAYONIER PROPERTIES, LLC, PAULA ROSE,)
8 SUSSMAN ROSE SUSSMAN, ALAN SUSSMAN,)
9 SOPHIE SUSSMAN, USG INTERIORS, INC.,)
10 WASSER & WINTERS CO., INC., WEST)
11 WATERWAY ASSOCIATES, P.S., ZIDELL)
12 MARINE CORPORATION,)
13 Defendants.)

10 Plaintiffs United States of America, by authority of the Attorney General, on behalf of the
11 National Oceanic and Atmospheric Administration of the Department of Commerce and the
12 Department of the Interior; State of Washington through the Washington Department of Ecology;
13 Puyallup Tribe of Indians; and Muckleshoot Indian Tribe, allege as follows:

14 I. GENERAL ALLEGATIONS

15 1. This is a civil action under section 107(a) of the Comprehensive Environmental
16 Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(a); section 311 of the
17 Clean Water Act (CWA), 33 U.S.C. § 1321; section 1002(b) of the Oil Pollution Act (OPA), 33
18 U.S.C. § 2702(b); and the Model Toxics Control Act (MTCA), RCW 70.105D, for damages for
19 injury to, destruction of, or loss of natural resources resulting from the release of hazardous
20 substances and discharges of oil into Commencement Bay in Tacoma, Washington.

21 II. JURISDICTION AND VENUE

22 2. This Court has jurisdiction over this case pursuant to sections 107 and 113(b) of
23 CERCLA, 42 U.S.C. §§ 9607 and 9613(b); section 311(n) of the CWA, 33 U.S.C. § 1321(n);
24 section 1017(b) of OPA, 33 U.S.C. § 2717(b); and 28 U.S.C. §§ 1331, 1345 and 1367(a).

25 3. Venue is proper in this district pursuant to section 113(b) of CERCLA, 42 U.S.C.
26 § 9613(b); section 1017(b) of OPA, 33 U.S.C. § 2717(b); and 28 U.S.C. § 1391(b) and (c).

1 III. THE SITE

2 4. Commencement Bay is an embayment in southern Puget Sound located in and
3 adjacent to Tacoma, Washington.

4 5. The "Commencement Bay Environment" as used in this Complaint means the
5 waters of Commencement Bay, including the shoreline, intertidal areas, tributaries, drainage
6 areas, estuaries and bottom sediments, lying south of a line drawn from Point Defiance to Dash
7 Point, and including the Thea Foss Waterway, Wheeler-Osgood Waterway, Middle Waterway,
8 St. Paul Waterway, Puyallup River from the mouth south to the present City limits, Milwaukee
9 Waterway, Sitcum Waterway, Blair Waterway and Hylebos Waterway. This area includes but is
10 not limited to the Commencement Bay Nearshore/Tideflats Superfund Site, as identified or
11 amended by the U.S. Environmental Protection Agency, and areas affected by releases of
12 hazardous substances within the Commencement Bay Nearshore/Tideflats Superfund Site.

13 6. Commencement Bay is contaminated with a variety of hazardous substances,
14 including antimony, cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-
15 phthalate, hexachlorobenzene, hexachlorobutadiene, polycyclic aromatic hydrocarbons and
16 polychlorinated biphenyls (PCBs).

17 7. The Hylebos Waterway and Commencement Bay are navigable waters within the
18 meaning of section 1001(21) of OPA, 33 U.S.C. § 2701(21), and section 502(7) of the CWA, 33
19 U.S.C. § 1362(7).

20 IV. PLAINTIFFS

21 8. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of
22 OPA, 33 U.S.C. § 2706, section 311(f)(5) of the CWA, 33 U.S.C. § 1321(f)(5), and 40 C.F.R. §
23 300.600, the United States is trustee for certain natural resources in the Hylebos Waterway and
24 the Commencement Bay Environment.

25 9. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of
26 OPA, 33 U.S.C. § 2706, section 311(f)(5) of the CWA, 33 U.S.C. § 1321(f)(5), 40 C.F.R. §
27 300.605, Ch. 43.21A RCW, Ch. 70.105D RCW, and Ch. 90.48 RCW, the State of Washington is
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1 trustee for certain natural resources in the Hylebos Waterway and the Commencement Bay
2 Environment.

3 10. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of
4 OPA, 33 U.S.C. § 2706, and 40 C.F.R. § 300.610, the Puyallup Tribe of Indians is trustee for
5 certain natural resources in the Hylebos Waterway and the Commencement Bay Environment.

6 11. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of
7 OPA, 33 U.S.C. § 2706, and 40 C.F.R. § 300.610, the Muckleshoot Indian Tribe is trustee for
8 certain natural resources in the Hylebos Waterway and the Commencement Bay Environment.

9 V. DEFENDANTS

10 12. Defendant AOL Express, Inc. is a corporation organized under the laws of the
11 State of Alaska.

12 13. AOL Express, Inc. does business in this district.

13 14. AOL Express, Inc. has owned and operated a goods storing, packaging and
14 shipping facility along the Hylebos waterway since 1983.

15 15. AOL Express, Inc.'s site is a facility within the meaning of section 101(9) of
16 CERCLA, 42 U.S.C. § 9601(9).

17 16. There have been discharges and releases of hazardous substances and oil at AOL
18 Express, Inc.'s facility into the Hylebos Waterway and the Commencement Bay Environment.

19 17. Arkema, Inc. is a corporation organized under the laws of the State of
20 Pennsylvania.

21 18. Arkema, Inc. does business in this district.

22 19. Arkema, Inc. owned and operated a chlorine and caustic manufacturing plant
23 along the Hylebos Waterway from 1927 to 1994.

24 20. Arkema, Inc.'s plant is a facility within the meaning of section 101(9) of
25 CERCLA, 42 U.S.C. § 9601(9).

26 21. Arkema, Inc. owned property along the Hylebos Waterway leased to a log storage
27 and sorting facility.

1 22. The property used for log storage and sorting is a facility within the meaning of
2 section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

3 23. There have been discharges and releases of hazardous substances and oil at
4 Arkema, Inc's facilities into the Hylebos Waterway and the Commencement Bay Environment.

5 24. Buffelen Woodworking Co. is a corporation organized under the laws of the State
6 of Washington.

7 25. Buffelen Woodworking Co. does business in this district.

8 26. Buffelen Woodworking Co. has owned and operated a wood products
9 manufacturing plant along the Hylebos waterway since 1955.

10 27. Buffelen Woodworking Co.'s plant is a facility within the meaning of section
11 101(9) of CERCLA, 42 U.S.C. § 9601(9).

12 28. There have been discharges and releases of hazardous substances and oil at
13 Buffelen Woodworking Co.'s facility into the Hylebos Waterway and the Commencement Bay
14 Environment.

15 29. CHS, Inc. is a corporation organized under the laws of the State of Minnesota.

16 30. CHS, Inc. does business in this district.

17 31. CHS, Inc. owned and operated an animal feed manufacturing plant along the
18 Hylebos waterway from 1982-1996.

19 32. CHS, Inc.'s plant is a facility within the meaning of section 101(9) of CERCLA,
20 42 U.S.C. § 9601(9).

21 33. There have been discharges and releases of hazardous substances and oil at CHS,
22 Inc's facility into the Hylebos Waterway and the Commencement Bay Environment.

23 34. Dunlap Towing Company is a corporation organized under the laws of the State of
24 Washington.

25 35. Dunlap Towing Company does business in this district.

26 36. Dunlap Towing Company leased property along the Hylebos waterway on which
27 it operated a log storage and sorting business.

1 37. The site of the log storage and sorting business is a facility within the meaning of
2 section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

3 38. There have been discharges and releases of hazardous substances and oil at
4 Dunlap Towing Company's facility into the Hylebos Waterway and the Commencement Bay
5 Environment.

6 39. Edward and Molly Barry are residents of the State of Arizona.

7 40. Charles P. and Patricia Curran are residents of the State of Washington.

8 41. Donald S. and Barbara L. Olson are residents of the State of Washington.

9 42. Kay E. Olson is a resident of the State of Washington.

10 43. Olson & Curran Barnacle Stopping Salt Water Free Vertical Dry Dock Co. is a
11 corporation organized under the laws of the State of Washington.

12 44. Olson & Curran Barnacle Stopping Salt Water Free Vertical Dry Dock Co. does
13 business in this district.

14 45. Since 1975, Edward and Molly Barry, Charles P. and Patricia Curran, Donald S.
15 and Barbara L. Olson, Kay E. Olson, Olson & Curran Barnacle Stopping Salt Water Free Vertical
16 Dry Dock Co., doing business as Ole & Charlie's Marinas and West Waterway Associates, P.S.,
17 have owned and operated a marina along the Hylebos Waterway.

18 46. The marina is a facility within the meaning of section 101(9) of CERCLA, 42
19 U.S.C. § 9601(9).

20 47. There have been discharges and releases of hazardous substances and oil at the
21 marina into the Hylebos Waterway and the Commencement Bay Environment.

22 48. F.O.F., Inc. is a corporation organized under the laws of the State of Idaho.

23 49. At times relevant to this complaint, F.O.F., Inc. did business in this district.

24 50. F.O.F., Inc. owned and operated from 1967-1978, and owned from 1978-1982, a
25 tank farm and fuel finishing plant along the Hylebos Waterway.

26 51. F.O.F. Inc.'s tank farm and plant are facilities within the meaning of section
27 101(9) of CERCLA, 42 U.S.C. § 9601(9).

1 52. There were discharges and releases of hazardous substances and oil at F.O.F.'s
2 facilities into the Hylebos Waterway and the Commencement Bay Environment.

3 53. Hylebos Marina, Inc. is a corporation organized under the laws of the State of
4 Washington.

5 54. At times relevant to this complaint, Hylebos Marina, Inc. did business in this
6 district.

7 55. Hylebos Marina, Inc. operated a marina along the Hylebos waterway from 1962-
8 1982.

9 56. The marina is a facility within the meaning of section 101(9) of CERCLA, 42
10 U.S.C. § 9601(9).

11 57. There have been discharges and releases of hazardous substances and oil at
12 Hylebos Marina, Inc.'s facilities into the Hylebos Waterway and the Commencement Bay
13 Environment.

14 58. Norman and Phyllis Nordlund operated the Hylebos Marina from 1962-1982.

15 59. Nordlund Boat Company, Inc. is a corporation organized under the laws of the
16 State of Washington.

17 60. At times relevant to this complaint, Nordlund Boat Company, Inc. did business in
18 this district.

19 61. At times relevant to this complaint, Nordlund Boat Company, Inc. operated the
20 Hylebos Marina.

21 62. Nordlund Properties, Inc. is a corporation organized under the laws of the State of
22 Washington.

23 63. At times relevant to this complaint, Nordlund Properties, Inc. did business in this
24 district.

25 64. At times relevant to this complaint, Nordlund Properties, Inc. operated the
26 Hylebos Marina.

27 65. Judy Johnson is a resident of the State of Washington.
28

1 66. Don Oline is a resident of the State of Washington.

2 67. Alba Oline was a resident of the State of Washington.

3 68. Ronald Oline is a resident of the State of Washington.

4 69. At times relevant to this complaint, Judy Johnson, Don and Alba Oline and
5 Ronald Oline owned part of the site on which the Hylebos Marina was located.

6 70. There have been discharges and releases of hazardous substances and oil at the
7 portion of the Hylebos Marina, Inc.'s facilities owned by Judy Johnson, Don and Alba Oline and
8 Ronald Oline.

9 71. At times relevant to this complaint, Judy Johnson, Don and Alba Oline and
10 Ronald Oline owned the site of Don Oline Autofluff, where vehicle demolition debris were
11 deposited.

12 72. The Don Oline Autofluff site is a facility within the meaning of section 101(9) of
13 CERCLA, 42 U.S.C. § 9601(9).

14 73. There have been discharges and releases of hazardous substances and oil at the
15 Don Oline Autofluff facility into the Hylebos Waterway and the Commencement Bay
16 Environment.

17 74. Jones Chemicals, Inc. is a corporation organized under the laws of the State of
18 New York.

19 75. Jones Chemicals, Inc. does business in this district.

20 76. Jones Chemicals, Inc. has owned and operated a chemical manufacturing plant
21 along the Hylebos waterway since 1974.

22 77. Jones Chemicals, Inc.'s plant is a facility within the meaning of section 101(9) of
23 CERCLA, 42 U.S.C. § 9601(9).

24 78. There have been discharges and releases of hazardous substances and oil at Jones
25 Chemicals, Inc.'s facility into the Hylebos Waterway and the Commencement Bay Environment.

26 79. Joseph Simon & Sons is a corporation organized under the laws of the State of
27 Washington.

1 80. Joseph Simon & Sons does business in this district.

2 81. Joseph Simon & Sons, through its subsidiary Rail and Locomotive Equipment
3 Co., operated a locomotive storage and dismantling facility along the Hylebos Waterway from
4 1980 to 1984.

5 82. Joseph Simon & Sons has owned the site of the facility since 1975.

6 83. The locomotive storage and dismantling site is a facility within the meaning of
7 section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

8 84. There have been discharges and releases of hazardous substances and oil at Joseph
9 Simon & Sons' facility into the Hylebos Waterway and the Commencement Bay Environment.

10 85. Louisiana-Pacific Corporation is a corporation organized under the laws of the
11 State of Delaware.

12 86. Louisiana-Pacific Corporation does business in this district.

13 87. Louisiana-Pacific Corporation owned and operated a log storage and sorting yard
14 along the Hylebos waterway from 1974-2004.

15 88. Louisiana-Pacific Corporation's log storage and sorting yard is a facility within
16 the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

17 89. There have been discharges and releases of hazardous substances and oil at
18 Louisiana-Pacific Corporation's facility into the Hylebos Waterway and the Commencement Bay
19 Environment.

20 90. Noveon Kalama Chemical, Inc. is a corporation organized under the laws of the
21 State of Washington.

22 91. Noveon Kalama Chemical, Inc. does business in this district.

23 92. Noveon Kalama Chemical, Inc. owned and operated a petroleum refinery and
24 storage operation along the Hylebos waterway from 1976-1981.

25 93. Noveon Kalama Chemical, Inc.'s refinery is a facility within the meaning of
26
27
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1 section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2 94. There have been discharges and releases of hazardous substances and oil at
3 Noveon Kalama Chemical, Inc's facility into the Hylebos Waterway and the Commencement
4 Bay Environment.

5 95. Rayonier Properties, LLC is a limited liability company organized under the laws
6 of the State of Delaware.

7 96. Rayonier Properties, LLC does business in this district.

8 97. Rayonier Properties, LLC is the successor to owners and operators of pulp mills
9 that operated during the 1920's-1940's along the Hylebos Waterway.

10 98. Rayonier Properties, LLC's mills were facilities within the meaning of section
11 101(9) of CERCLA, 42 U.S.C. § 9601(9).

12 99. There have been discharges and releases of hazardous substances and oil at
13 Rayonier Properties, LLC's facilities into the Hylebos Waterway and the Commencement Bay
14 Environment.

15 100. Leslie P. Sussman was a resident of the State of Washington.

16 101. Sophie Sussman is a resident of the State of Washington.

17 102. Alan Sussman is a resident of the State of New York.

18 103. Paula Rose is a resident of the State of Washington.

19 104. Sussman Rose Sussman is a general partnership organized under the laws of the
20 State of Washington.

21 105. Leslie P. Sussman, Sophie Sussman, Alan Sussman, Paula Rose and Sussman
22 Rose Sussman owned property along the Hylebos Waterway from 1966-1992 on which tenants
23 operated a metal recycling facility.

24 106. The metal recycler was a facility within the meaning of section 101(9) of
25 CERCLA, 42 U.S.C. § 9601(9).

1 107. There have been discharges and releases of hazardous substances and oil at the
2 metal recycling facility into the Hylebos Waterway and the Commencement Bay Environment.

3 108. USG Interiors, Inc. is a corporation organized under the laws of Delaware.

4 109. USG Interiors, Inc. did business in this district.

5 110. USG Interiors, Inc. owned and operated a rock wool manufacturing plant along
6 the Hylebos Waterway from 1959-1996.

7 111. USG Interiors, Inc.'s plant is a facility within the meaning of section 101(9) of
8 CERCLA, 42 U.S.C. § 9601(9).

9 112. There have been discharges and releases of hazardous substances and oil at USG
10 Interiors, Inc.'s facility into the Hylebos Waterway and the Commencement Bay Environment.

11 113. Wasser & Winters Co., Inc. is a corporation organized under the laws of
12 Washington.

13 114. Wasser & Winters, Inc. does business in this district.

14 115. Wasser & Winters, Inc. operated a log storage and sorting facility along the
15 Hylebos waterway from 1972-1984.

16 116. Wasser & Winters, Inc.'s log storage and sorting site is a facility within the
17 meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

18 117. There have been discharges and releases of hazardous substances and oil at
19 Wasser & Winters, Inc.'s facility into the Hylebos Waterway and the Commencement Bay
20 Environment.

21 118. Zidell Marine Corporation is a corporation organized under the laws of the State
22 of Washington.

23 119. Zidell Marine Corporation does business in this district.

24 120. Zidell Marine Corporation operated a ship dismantling facility along the Hylebos
25 waterway from the 1960's-1970's.

1 121. Zidell Marine Corporation's ship dismantling operation is a facility within the
2 meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

3 122. There have been discharges and releases of hazardous substances and oil at Zidell
4 Marine Corporation's facility into the Hylebos Waterway and the Commencement Bay
5 Environment.

6 VI. FIRST CLAIM FOR RELIEF

7 123. Plaintiffs reallege paragraphs 1 through 122.

8 124. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part, as
9 follows:

10 Notwithstanding any other provision or rule of law, and subject
11 only to the defenses set forth in subsection (b) of this section -

12 (1) the owner and operator of a vessel or a facility,

13 (2) any person who at the time of disposal of any hazardous
14 substance owned or operated any facility at which such hazardous
15 substances were disposed of,

16 (3) any person who by contract, agreement, or otherwise arranged
17 for disposal or treatment, or arranged with a transporter for
18 transport for disposal or treatment, of hazardous substances owned
19 or possessed by such person, by any other party or entity, at any
20 facility or incineration vessel owned or operated by another party
21 or entity and containing such hazardous substances, and

22 (4) any person who accepts or accepted any hazardous substances
23 for transport to disposal or treatment facilities, incineration vessels
24 or sites selected by such person, from which there is a release, or a
25 threatened release which causes the incurrence of response costs,
26 of a hazardous substance, shall be liable for

27 * * *

28 (C) damages for injury to, destruction of, or loss of natural resources,
including the reasonable costs of assessing such injury, destruction, or loss
resulting from such a release;

* * *

125. Materials disposed of and released in the Commencement Bay Environment by

Defendants include hazardous substances within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

126. The Commencement Bay Environment is a facility within the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

127. Releases of hazardous substances have occurred in the Commencement Bay Environment within the meaning of sections 101(22) of CERCLA, 42 U.S.C. § 9601(22). The releases of hazardous substances in the Commencement Bay Environment at the facilities operated by Defendants have resulted in injury to, destruction of, or loss of natural resources within the trusteeship of one or more of the Plaintiffs.

128. Defendants are persons within the meaning of section 107 of CERCLA, 42 U.S.C. § 9607.

129. Defendants are liable to Plaintiffs for natural resource damages resulting from releases of hazardous substances pursuant to section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

VII. SECOND CLAIM FOR RELIEF

130. Plaintiffs reallege paragraphs 1 through 129.

131. Section 1002(a) of OPA, 33 U.S.C. § 2702(a), provides in pertinent part, as follows:

Notwithstanding any other provision or rule of law, and subject to the provisions of this Act, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in subsection (b) of this section that result from such incident.

132. Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), provides in pertinent part, as follows:

Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian Tribe trustee, or a

1 foreign trustee.

2 133. The sites owned or operated by Defendants are facilities within the meaning of
3 sections 1001(9) and 1002 of OPA, 33 U.S.C. §§ 2701(9) and 2702.

4 134. Defendants are responsible parties within the meaning of section 1001(32) of
5 OPA, 33 U.S.C. § 2701(32).

6 135. The discharge of oil into the Hylebos Waterway or adjoining shorelines at the
7 facilities operated by Defendants has resulted in injury to, destruction of, or loss of natural
8 resources within the trusteeship of one or more of the Plaintiffs.

9 136. Defendants are liable to Plaintiffs for natural resource damages resulting from
10 discharges of oil pursuant to section 1001 of OPA, 33 U.S.C. § 2701.

11 VIII. THIRD CLAIM FOR RELIEF

12 137. Plaintiffs reallege paragraphs 1 through 136.

13 138. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), provides in pertinent part,
14 as follows:

15 The discharge of oil or hazardous substances (i) into or upon the navigable waters
16 of the United States, adjoining shorelines, or into or upon the waters of the
17 contiguous zone . . . or which may affect natural resources belonging to,
18 appertaining to, or under the exclusive management authority of the United States
19 . . . in such quantities as may be harmful as determined by the President under
20 paragraph (4) of this subsection, is prohibited

21 139. Section 311(f)(2) of the CWA, 33 U.S.C. § 1321(f)(2), provides in pertinent part,
22 as follows:

23 Except where an owner or operator of an onshore facility can prove that a
24 discharge was caused solely by (A) an act of God, (B) an act of war, (C)
25 negligence on the part of the United State Government, or (D) an act or omission
26 of a third party without regard to whether an such act or omission was or was not
27 negligent, or any combination of the foregoing clauses, such owner or operator of
28 any such facility from which oil or a hazardous substance is discharged in
violation of subsection (b)(3) of this section shall be liable to the United States
Government for the actual costs incurred under subsection (c) of this section for
the removal of such oil or substance by the United States Government

140. Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4), provides in pertinent part,

1 as follows:

2 The costs of removal of oil or a hazardous substance for which the owner or
3 operator of a vessel or onshore or offshore facility is liable under subsection (f) of
4 this section shall include any costs or expenses incurred by the Federal
5 Government or any State government in the restoration or replacement of natural
6 resources damaged or destroyed as a result of a discharge of oil or a hazardous
7 substance in violation of subsection (b) of this section.

8 141. The facilities owned or operated by Defendants are onshore facilities within the
9 meaning of section 311(f)(1) of the CWA, 33 U.S.C. § 1321(f)(1).

10 142. There have been discharges of oil or hazardous substances in harmful quantities
11 into the Hylebos Waterway and adjoining shorelines from the facilities owned or operated by
12 Defendants.

13 143. Discharges of oil or hazardous substances from the facilities owned or operated by
14 Defendants into the Hylebos Waterway or adjoining shorelines have affected, damaged or
15 destroyed natural resources belonging to, appertaining to, or under the exclusive management
16 authority of the United States.

17 144. Defendants are liable to the United States and State of Washington for natural
18 resource damages resulting from discharges of oil or hazardous substances into the Hylebos
19 Waterway or adjoining shorelines pursuant to section 311(f) of the CWA, 33 U.S.C. § 1321(f).

20 IX. FOURTH CLAIM FOR RELIEF

21 145. Plaintiffs reallege paragraphs 1 through 144.

22 146. MTCA, Chapter 70.105D.040 RCW, provides in pertinent part as follows:

23 (1) Except as provided in subsection (3) of this section, the following persons are liable
24 with respect to a facility:

25 (a) The owner or operator of the facility;

26 (b) Any person who owned or operated the facility at the time of disposal or
27 release of the hazardous substances;

28 (c) Any person who owned or possessed a hazardous substance and who by
contract, agreement, or otherwise arranged for disposal or treatment of the hazardous
substance at the facility, or arranged with a transporter for transport for disposal or

1 treatment of the hazardous substances at the facility, or otherwise generated hazardous
2 wastes disposed of or treated at the facility;

3 (d) Any person (i) who accepts or accepted any hazardous substance for transport
4 to a disposal, treatment or other facility selected by such person, from which there is a
5 release or a threatened release for which remedial action is required, unless such facility,
at the time of disposal or treatment, could legally receive such substance; or (ii) who
accepts a hazardous substance for transport to such a facility and has reasonable grounds
to believe that such facility is not operated in accordance with chapter 70.105 RCW; and

6 (e) Any person who both sells a hazardous substance and is responsible for written
7 instructions for its use if (i) the substance is used according to the instructions and (ii) the
use constitutes a release for which remedial action is required at the facility.

8 (2) Each person who is liable under this section is strictly liable, jointly and severally, for
9 ... all natural resource damages resulting from the releases or threatened releases of
hazardous substances.

10 147. Materials disposed of and released in the Commencement Bay Environment at
11 sites owned or operated by Defendants include hazardous substances within the meaning of
12 Chapter 70.105D.020(6)(c) RCW.

13 148. The sites owned or operated by Defendants are facilities within the meaning of
14 Chapter 70.105D.020(4).

15 149. The Commencement Bay Environment is a facility within the meaning of Chapter
16 70.105D.020(4).

17 150. Releases or threatened releases of hazardous substances have occurred in the
18 Commencement Bay Environment within the meaning of Chapter 70.105D.020 and Chapter
19 70.105D.040.

20 151. The natural resources that have been and continue to be injured, destroyed, or lost
21 by the release of hazardous substances at facilities owned or operated by Defendants include fish,
22 shellfish, invertebrates, birds, marine sediments, and other such natural resources.

23 152. The State of Washington has incurred and continues to incur response costs
24 related to the assessment of injury to natural resources caused by the releases of hazardous
25 substances at facilities owned or operated by Defendants.

1 153. Pursuant to Rev. Code Wash. Chapter 70.105D.040(2), Defendants are jointly and
2 severally liable to the State of Washington for all damages to natural resources in the
3 Commencement Bay Environment, resulting from the release of hazardous substances at or from
4 Defendants' facilities.

5
6 X. REQUEST FOR RELIEF

7 WHEREFORE, Plaintiffs request that this Court enter judgment against
8 Defendants:

9 (1) For damages for injury to natural resources resulting from the discharges or releases
10 of hazardous substances in the Hylebos Waterway and Commencement Bay Environment,
11 including the cost of assessing such damages; and

12 (2) Awarding Plaintiffs such other and further relief as this Court may deem appropriate.

13 Dated: February __, 2006
14
15

16 UNITED STATES OF AMERICA

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COMPLAINT - 19

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